**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY PETITION NO.740 OF 2005**
**CONNECTED WITH**
**COMPANY APPLICATION NO.518 OF 2005**

In the matter of The Companies Act, 1956 :

And

In the matter of Sections 391 to 394 of the Companies Act, 1956 ;

And

In the matter of Scheme of Amalgamation of Tata Infotech Ltd. (Transferor Co.) with Tata Consultancy Services Ltd. (Transferee Co.) and their respective members and creditors.

Tata Infotech Ltd. ..Petitioner Co.

Mr.Janak Dwarkadas with Mr.Sanjay Jain and Mr.Cyrus Bharucha i/b.M/s.AZB & Partners for the Petitioners.

Mr.C.J.Joy for the Regional Director.

Mr.Richard D'Souza for the Objectionist.

**CORAM : S.J. VAZIFDAR, J.**
**DATED : 27TH JANUARY, 2006**

**P.C. :**

The Petitioner is the transferor company. The petition is for amalgamation with Tata Consultancy Services Ltd., the transferee company and the Petitioner in Company Petition No.741 of 2005.

2. There is no dispute that the entire proceedings leading to this petition have complied with all the legal requirements.

3. The Official Liquidator in his report stated that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to the public interest. The Regional Director in his affidavit has stated that the scheme is not prejudicial to the interest of the creditors and the shareholders.

4. There is no dispute that the amalgamation is in the interest of the shareholders and the creditors of the Petitioner as well as the transferee company.

5. However, it is clarified that all statutory requirements under section 17 and 18 of the Companies Act shall be complied with by the transferee company in view of the alterations in the objects clause of the Memorandum of Association of the transferee company.

6. The only objection is by one Richard Joseph D’Souza who has appeared in person and filed his affidavit in opposition. There has been protracted

litigation between the transferor company and the said D'Souza inter-alia under section 630 of the Companies Act. The company has filed a suit to recover various amounts from the said D'Souza towards mesene profits. The said D'Souza, in turn, has filed a counter claim as well as criminal proceedings against the Directors of the transferor company, which are pending. His only apprehension is that the proposed merger ought not to prejudice the proceedings adopted by him including the criminal proceedings against the Directors of the transferor company. He further contends that he has certain other claims also against the transferor company and that the merger ought not to affect his right in respect thereof.

7. The rights of the said D'Souza both in the criminal proceedings as well as in the civil proceedings adopted and to be adopted, cannot possibly be affected by the said merger. Mr.Dwarkadas, the learned Senior Counsel appearing on behalf of the Petitioners did not dispute this either. He submitted that the apprehension of the said D'Souza is unfounded in view of clauses 5.1 and 6.1 of the scheme.

7. In addition thereto, with a view not to leave any room for doubt, the statement made by Mr.Dwarkadas on behalf of the Petitioners is accepted. Mr.Dwarkadas, on taking instructions from the Petitioners, agrees and undertakes on behalf of the transferor and the transferee companies and their directors to the following :

i) Not to contend that by virtue of the merger the rights of the said D'Souza in the civil and criminal proceedings which have been adopted and which may hereafter be adopted, are adversely affected in any manner whatsoever.

ii) He further undertakes on behalf of the transferee company to satisfy any decree that may be passed in favour of the said D'Souza, without requiring him to adopt execution proceedings for the same.

9. In view of the above, there is no objection to the sanctioning of the said scheme.

10. In the circumstances, the Petition is made absolute in terms of prayers (a) to (l).

11. Costs of the Regional Director and the Official Liquidator fixed at Rs.2500/- each.

12. Filing and issuance of the drawn up order is dispensed with.

All concerned to act on an ordinary copy of this order duly authenticated by the Company Registrar.

Certified copy expedited.